



Legislative Analysis Sheet 2010 Legislative Session

Federal Deficit Reduction Act Compliance Legislation

Purpose of Legislation:

To align Georgia's child support laws with new federal requirements passed under the Deficit Reduction Act, provide state statutory authority for assessing a review and modification fee (already assessed pursuant to federal law), clarify that the Department can mail its agency recommendation for review and modification to the custodial and noncustodial parent and simultaneously file a motion with the court to adopt its recommendation, and clarify that parties are responsible for the cost of service in the event that they fail to acknowledge service.

Consequences of Not Pursing:

The federal Office of Child Support Enforcement will not certify Georgia's IV-D State Plan due to noncompliance with federal law which will place Georgia's federal IV-D funding at risk. OCSS will be unable to engage in cost recovery for service fees paid in review and modification cases when a party refuses to acknowledge service which reduces its ability to provide additional front line services to families in need.

Georgia Code (O.G.C.A) Impacted

O.C.G.A. §§19-11-12, 19-11-27

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A BILL TO BE ENTITLED

AN ACT

To amend Article 1, Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the Child Support Recovery Act so as to provide for mandatory requirements for the review and modification of orders in cases receiving Temporary Assistance for Needy Families and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 19-11-5 of the Official Code of Georgia Annotated, relating to public assistance debt owed to the state, is amended by revising subsection (b) as follows:

(a) The payment of public assistance to or on behalf of a child creates a debt due and owing the state by the parent or parents responsible for the support of the child. The amount of the debt is the amount necessary to meet the total needs of the child or children and the person having custody, if included in the public assistance grant, as determined by the department in conformity with the federal Social Security Act; provided, however, that, where a court has ordered child support incident to a final divorce or in a criminal proceeding for nonsupport or where the responsible parent has entered into a legally enforceable and binding agreement, the debt created shall be equal to the amount set in such decree, order, hearing, or agreement.

(b) The department, in accordance with rules established by the Board of Human Services, shall be authorized to waive, reduce, or negotiate the payment of unreimbursed

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public assistance if it is determined that good cause for nonpayment exists or that enforcement of the claim would result in substantial and unreasonable hardship to the parent or parents responsible for the support of the child against whom the claim exists. The rules established by the Board of Human Services shall consider the ability of the responsible party to support the child or children during the period that public assistance was provided and the ~~current~~ history of regularity of payment by the responsible party. This subsection shall not apply to any court order or decree requiring the repayment of public assistance; however, the department is authorized to petition the court for consideration of a ~~modification of an order or decree~~ motion to reduce the amount of unreimbursed public assistance owed to the State of Georgia based on factors contained in this subsection and in the rules established by the Board of Human Services relating to such unreimbursed public assistance.

SECTION 2.

Code Section 19-11-12 of the Official Code of Georgia Annotated, relating to review and modification of child support orders, is amended as follows:

(a) The IV-D agency shall review orders for child support ~~in determine the ability of the noncustodial parent to support his or her child or children~~ in accordance with the guidelines prescribed in Code Section 19-6-15.

(b)(1) The IV-D agency shall periodically give notice to the obligor and obligee who are subject to a IV-D court order for child support, as defined in paragraph (1) of Code Section 19-11-3, of the right of each to request a review of the order by the IV-D agency for possible recommendation for adjustment of such order. Such notification should be provided within 36 months after the establishment of the order or the most recent review; however, failure to provide the notice within 36 months shall not affect the right of either

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party to request, in writing, a review nor the right of the IV-D agency to conduct a review and to recommend an adjustment to the order. The notice can be included in the initial order or review recommendation.

(A) All IV-D Agency orders that are active TANF cases shall be reviewed under this code section following the expiration of the 36th month after the order was issued, without a request from either parent or other legal custodian.

(B) All other orders for support being enforced by the IV-D Agency shall be eligible for review pursuant to this code section upon application and payment of any fee.

(2) The establishment of a child support order or the entry of an order to modify a child support order or a determination of no change to a child support order under this Code section shall commence a 36 month cycle, the purpose of which is to provide the parties the right to a review of the order at least every 36 months or in such shorter cycle as the IV-D agency may determine. The failure of either party to request a review at least once every 36 months shall not affect the right of either party to request a review nor the right of the IV-D agency to conduct a review and to recommend an adjustment to the order at any time beyond the 36 month cycle.

~~(c)(1) The IV-D agency shall review IV-D court orders for child support, as defined in paragraph (1) of Code Section 19-11-3, for possible modification under this chapter. The review shall be performed upon the written request of either the obligor or obligee, or, if there is an assignment under subsection (a) of Code Section 19-11-6, upon the request of the IV-D agency or of the obligor or obligee. Exceptions to this procedure are cases~~

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where the IV-D agency determines that such a review would not be in the best interest of the child or children involved.

(2) If the request for the review occurs less than 36 months since the last issuance or last review of the order, the IV-D agency shall review, and if the requesting party demonstrates a substantial change in circumstances, seek to modify the order in accordance with the guidelines as provided by paragraph (2) of subsection (d) of this Code section.

(3) If the request for the review occurs at least 36 months after the last issuance or last review, the requesting party shall not be required to demonstrate a substantial change in circumstances, the need for additional support, or that the needs of the child have decreased. The sole basis for a recommendation for a change in the award of support under this paragraph shall be a significant inconsistency between the existing child support order and the amount of child support which would result from the application of Code Section 19-6-15.

(d)(1) The IV-D agency shall notify the obligor and obligee at least 30 days before the commencement of a review of a child support order.

(2) The IV-D agency shall review and, if there is a significant inconsistency between the amount of the existing child support order and the amount of child support which would result from the application of Code Section 19-6-15, the agency shall make a recommendation for an increase or decrease in the amount of an existing order for support. The IV-D agency shall not be deemed to be representing either the obligee or obligor in a proceeding under this Code section.

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(3) Upon completion of a review, the IV-D agency shall send notice by first-class mail to the obligor and obligee at their last known addresses of a proposed adjustment or a determination that there should be no change in the child support award amount- as well as file a motion to adopt its recommendation by means of legal service. The IV-D agency shall give both parties an opportunity to accept service of the petition to adopt its recommendation. ~~Each party shall have 30 days from the date of the mailed notice to object in writing to the IV-D agency's proposed adjustment or determination of no change.~~

(4)(A) In the case of an administrative order, the agency shall request the administrative law judge to increase or decrease the amount in the existing order in accordance with the agency recommendation. If either the obligor or the obligee files with the agency within 30 days written objections to the agency's proposed adjustment to the child support order or determination of no change to the child support order, the matter shall be scheduled for an administrative hearing within the Office of State Administrative Hearings. The administrative order adjusting the child support award amount which results from a hearing or the failure to object to the agency's proposed adjustment or determination of no change shall, upon filing with the local clerk of the court, have the full effect of a modification of the original order or decree of support. As part of the order adjusting the child support award the administrative law judge shall issue an income and earnings deduction order which shall also be filed with the court pursuant to Code Sections 19-6-30 through 19-6-33.

(B) In the case of a judicial order, the agency shall file a petition asking the court to adopt the agency's recommendation for an increase or decrease in the amount in the existing order. Upon the filing of a written objection to the agency's proposed adjustment or determination of no change with the clerk of the superior court and with the agency, a

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de novo proceeding shall be scheduled with the court on the matter. If neither party files an objection within the 30 day notice period, the court shall issue an order adopting the recommendation of the IV-D agency. As part of the order adjusting the child support award, the court shall issue an income and earnings deduction order pursuant to Code Sections 19-6-30 through 19-6-33.

(e) When the trier of fact, the administrative law judge for administrative orders, or a judge of the superior court for court orders, as the case may be, determines that there is a significant inconsistency between the existing child support order and the amount of child support which would result from the application of Code Section 19-6-15, the trier of fact may use this inconsistency as the basis to increase or decrease the amount of support ordered. The trier of fact may also address the repayment of any arrears accumulated under the existing order.

(f) An obligor shall not be relieved of his or her duty to provide support when such obligor has brought about his or her own unstable financial condition by voluntarily incurring subsequent obligations.

(g) The department shall be authorized to promulgate rules and regulations to implement the provisions of this Code section.

SECTION 3.

Code Section 19-11-27 of the Official Code of Georgia Annotated, relating to accident and sickness insurance coverage for children, is amended as follows:

(a) Whenever a ~~support obligor~~ party to a court order who is required to maintain accident and sickness insurance fails to provide such coverage as ordered, or allows such

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coverage to lapse, the department, the Department of Community Health, or the other party may compel ~~the obligor~~ the medical insurance obligor to obtain insurance coverage as provided in this Code section. The remedies provided in this Code section shall be in addition to and not in lieu of any other remedies available to the department, the Department of Community Health, or the other party.

(b) The National Medical Support Notice as prescribed under 42 U.S.C. Section 666(a)(19) shall be issued, when appropriate, by the IV-D agency to notify employers and health insurers of an order entered or being enforced by the IV-D agency pursuant to Code Section 19-11-8 and to enforce the accident and sickness coverage provisions of such order. The IV-D agency is not required to issue the National Medical Support Notice in cases where the court or administrative order stipulates alternative accident and sickness coverage that is not employer based.

(c) Upon failure of a medical insurance support obligor to obtain accident and sickness insurance coverage as ordered, or upon the lapse of coverage required to be provided, the department, the Department of Community Health, or the other party may issue and send a notice of enrollment or National Medical Support Notice by certified mail or statutory overnight delivery, return receipt requested, to the person or entity providing access to such coverage on behalf of the medical insurance obligor. The notice shall include a certified copy of the latest order requiring health insurance coverage and the return address of the sender.

(d) In all IV-D cases, the IV-D agency shall notify the medical insurance obligor in writing that the National Medical Support Notice has been sent to the medical insurance obligor's employer or union, and the written notification shall include the medical insurance obligor's rights and duties under the National Medical Support Notice. The

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medical insurance obligor has the right to contest the withholding required by the National Medical Support Notice based on a mistake of fact. To contest, the medical insurance obligor must file a written notice of contest with the IV-D agency within 15 business days from the date of the National Medical Support Notice. Filing with the IV-D agency shall be deemed complete when the notice is received by the person designated by the IV-D agency in the written notification. Upon the timely filing of a notice of contest, the IV-D agency shall, within five business days, schedule an informal conference with the medical insurance obligor to discuss the medical insurance obligor's factual dispute. If the informal conference resolves the dispute to the medical insurance obligor's satisfaction, or if the medical insurance obligor fails to attend the informal conference, the notice of contest shall be deemed withdrawn. If the informal conference does not resolve the dispute, the medical insurance obligor has the right to request an administrative hearing before an administrative law judge pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," within five business days after being notified of the results of the review by the IV-D agency. However, neither a request for informal review nor the filing of a notice of contest for an administrative hearing by the medical insurance obligor shall delay the withholding of premium payments by the union, employer, or health plan administrator. The union, employer, or health plan administrator must implement the withholding as directed by the National Medical Support Notice unless notified by the IV-D agency, court, or the Office of Administrative Hearings that the National Medical Support Notice is terminated.

(e) Any person or entity providing access to accident and sickness insurance coverage on behalf of the medical insurance obligor pursuant to a notice of enrollment or National Medical Support Notice shall withhold from the medical insurance obligor's income the amount necessary to pay the premium for the insurance coverage, provided that the amount deducted does not exceed the limitations of Section 303(b) of the federal

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Consumer Credit Protection Act, as amended.

(f) The department is authorized to adopt rules and regulations to implement the child support enforcement provisions of this Code section that affect IV-D cases.

(g) Upon receipt of a notice of enrollment or National Medical Support Notice:

(1) The employer and plan administrator shall comply with the provisions in the notice;

(2) The employer and plan administrator shall treat the notice as an application for health coverage for the dependent by the person or entity sending the notice to the extent such application is required by the plan;

(3) If the medical insurance obligor named in the notice is not an employee of the employer or if a health benefit plan is not offered or available to the employee, the employer shall notify the person or entity sending the notice, as provided in the notice, within 20 business days after the date of the notice;

(4) If a health benefit plan is offered or available to the employee, the employer shall send the plan administrator's portion of the notice to each appropriate plan administrator within 20 business days after the date of the notice;

(5) Upon notification from the plan administrator that the dependent is enrolled, the employer shall either withhold and transfer the premiums to the plan or notify the person or entity sending the notice that enrollment cannot be completed because of prioritization or limits on withholding as provided in subsection (e) of this Code section or as provided in the notice;

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(6) Upon notification from the plan administrator that the medical insurance obligor is subject to a waiting period that expires more than 90 days from the date of receipt of the notice by the plan administrator, or whose duration is determined by a measure other than the passage of time, the employer shall notify the plan administrator when the medical insurance obligor is eligible to enroll in the plan and that this notice requires enrollment of the dependent named in the notice in the plan;

(7) The plan administrator shall enroll the dependent and if necessary the medical insurance obligor in the plan selected under this paragraph. The plan administrator shall enroll the medical insurance obligor if enrollment of the medical insurance obligor is necessary to enroll the dependent. All the following shall apply in the selection of the plan:

(A) If the medical insurance obligor is enrolled in a health benefit plan that offers dependent coverage, the dependent shall be enrolled in the plan in which the medical insurance obligor is enrolled;

(B) If the medical insurance obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent coverage, and if only one plan with dependent coverage is offered by the employer, that plan shall be selected;

(C) If the medical insurance obligor is not enrolled in a health benefit plan that offers dependent coverage, and if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the IV-D agency, all of the following shall apply:

(i) If only one of the plans is accessible to the dependent, that plan shall be selected.

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If none of the plans with dependent coverage is accessible to the dependent, the IV-D agency shall amend or terminate the notice;

(ii) If more than one of the plans is accessible to the dependent, the plan selected shall be the plan for basic coverage for which the employee's share of the premium is lowest;

(iii) If more than one of those plans is accessible to the dependent, but none of the accessible plans is for basic coverage, the plan selected shall be an accessible plan for which the employee's share of the premium is the lowest; and

(iv) If the employee's shares of the premiums are the same, the IV-D agency shall consult the medical insurance obligee and select a plan. If the medical insurance obligee does not respond within ten days, the IV-D agency shall select a plan which shall be the plan's default option, if any, or the plan with the lowest deductibles and copayment requirements; and

(D) If the medical insurance obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent coverage, and if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by a IV-D child support enforcement agency of another state, that agency shall select the plan as provided in paragraph (8) of this subsection; and

(8) Within 40 business days after the date of the notice, the plan administrator shall do all of the following as directed in the notice:

(A) Complete the appropriate portion of the notice and return to the person or entity

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sending the notice;

(B) If the dependent is enrolled or is to be enrolled, notify the medical insurance obligor, the medical insurance obligee, and the child and furnish the medical insurance obligee with necessary information including any necessary claim forms or enrollment membership cards necessary to obtain benefits and provide the person or entity sending the notice with the type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescription drugs are covered services, and with a brief description of the applicable deductibles, coinsurance, waiting period for preexisting medical conditions, and other significant terms or conditions which materially affect the coverage;

(C) If more than one plan is available to the medical insurance obligor and the medical insurance obligor is not enrolled, forward plan descriptions and documents to the person or entity sending the notice and enroll the dependent, and if necessary the medical insurance obligor, in the plan selected by the person or entity sending the notice or any default option if the plan administrator has not received a selection from the person or entity sending the notice within 20 business days of the date the plan administrator returned the National Medical Support Notice response to the person or entity sending the notice;

(D) If the medical insurance obligor is subject to a waiting period that expires more than 90 days from the date the plan administrator received the notice or has not completed a waiting period whose duration is determined by a measure other than the passage of time, notify the employer, the person or entity sending the notice, the medical insurance obligor, and the medical insurance obligee; and upon satisfaction of the period or requirement, complete the enrollment;

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(E) Upon completion of the enrollment, notify the employer for a determination of whether the necessary employee share of the premium is available; and

(F) If the plan administrator is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. Section 1169, and the plan administrator determines the notice does not constitute a qualified medical child support order, complete and send the response to the person or entity sending the notice and notify the medical insurance obligor, the medical insurance obligee, and the child of the specific reason for the determination.

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.